

To: Herring, Margaret[herring.margaret@epa.gov]
Cc: Nash, Thomas[nash.thomas@epa.gov]
From: Hoffman, Timothy
Sent: Mon 3/9/2015 7:17:19 PM
Subject: FW: South Dayton Dump ("SDD") - Special Notice Letter - Dayton Industrial Drum ("DID")
[removed.txt](#)
[Ed Grillot Depo April 2012.pdf](#)
[Ed Grillot Depo December 2013 Vol. I.PDF](#)
[Ed Grillot Depo December 2013 Vol. II.PDF](#)

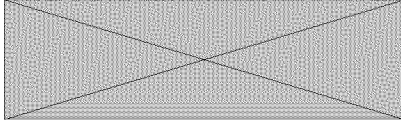
Good afternoon again Margaret.

I have attached the "specific" pages from the transcripts of Ed Grillot's deposition referred to by Mr. Nash as creating DID's nexus to the SDD. Those pages were separated from the entire transcripts that were sent to me in response to my FOIA request. Mr. Nash has indicated the nexus for DID at the SDD is the deposition of Ed Grillot. As you can see from Mr. Grillot's testimony on direct and cross there is no "nexus" to the SDD. In the first attachment Mr. Grillot references a "Barrel Factory" and even when led by Mr. Silver regarding DID he cannot connect the two. In the second attachment Mr. Grillot answers leading questions by Mr. Romine as if materials had been disposed of by DID at the SDD. This time Mr. Romine tried to connect the Barrel Factory and DID and got Mr. Grillot to answer he thought the two entities were the same over the objection of Mr. Pierce. Mr. Grillot also said a DID or Barrel Factory truck would bring the waste but he could not identify the truck (speculation on his part). There is then confusing testimony about when Mr. Grillot first remembered DID having brought waste to the SDD. The testimony goes from when Mr. Grillot was 12 or 13 years old to some unknown age. At that point Mr. Romine moved on. In the third attachment Mr. Grillot admits he does NOT know whether wastes were disposed of from DID at the SDD (pg 690). Upon further examination by Mr. Pierce, Mr. Grillot admits he has NO personal knowledge of drums coming to the SDD from the Barrel Factory either (pg 691 and 692) ! Mr. Grillot confirms he cannot identify any DID or Barrel Factory truck or other markings on drums. It is clear from reading the 3rd attachment that Mr. Grillot has no personal knowledge of anything being disposed of at the SDD by either DID or the so called Barrel Factory. His testimony is clear in that he simply "doesn't know" and has no firsthand knowledge.

I have already raised my objection to the remaining questions and their "nexus" to the SDD but I'd be happy to discuss that with you or Mr. Nash. In addition, based on the above very specific review of the Ed Grillot transcripts which is the only purported nexus related to DID and the SDD, I am asking Mr. Nash to withdraw the "Special Notice Letter" to DID.

Thank you.

Tim.


Timothy D. Hoffman

Partner

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From: Hoffman, Timothy
Sent: Friday, February 13, 2015 2:01 PM
To: 'herring.margaret@epamail.epa.gov'
Cc: 'Nash.Thomas@epamail.epa.gov'
Subject: FW: South Dayton Dump ("SDD") - Special Notice Letter - Dayton Industrial Drum ("DID")

Good afternoon Margaret.

This message follows my January 20, 2015 email to Tom Nash below and with it I'd like to request a short extension of time on behalf of DID to provide a formal response to the Information Request contained in the Special Notice Letter dated January 16, 2015. As you can see from the email below my client has objections to the Information Request and it has also made an FOIA request to USEPA to provide specific evidence that would show DID used the SDD for disposal of waste materials. Yesterday I was called by Sharon Travis of USEPA to tell me that a response to my request was forthcoming (FOIA #2015-003414 Dayton Industrial Drum). Until that information is received and reviewed DID has no information that would be responsive to the questions that are permitted to be asked under Section 104 (e)(2) of CERCLA.

Of the 23 questions asked by USEPA only two (questions 5 and 6) are in the specific areas of inquiry authorized by of Section 104 (e)(2) a. and b. The remaining questions are not narrowly tailored to conform to the specific areas of inquiry authorized by Section 104 (e)(2). The facility in question is the SDD and CERCLA permits questions related to the identification, nature and quantity of materials which have been or are generated, treated, stored, or disposed of at a facility (SDD) or transported to a facility(SDD); and the nature or extent of a release or

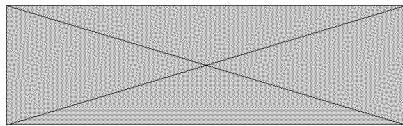
threatened release of a hazardous substance or pollutant or contaminant at or from a facility (SDD). The remaining questions simply do not conform to the specific areas of inquiry authorized by CERCLA.

I also understand the period of time in question for the Information Request is 1941 to 1996, the period of time the SDD was allegedly in operation. As stated in the messages below to Tom Nash, DID has no information that it disposed of anything at the SDD.

You might want to review the FOIA information DID will be receiving to see if there is anything responsive and so will we. Once that review is completed we will formally respond to questions 5 and 6 if there is anything in the FOIA information other than what we have already seen.

Thank you

Tim.



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From: Hoffman, Timothy
Sent: Tuesday, January 20, 2015 3:08 PM
To: 'Nash.Thomas@epamail.epa.gov'
Subject: South Dayton Dump ("SDD") - Special Notice Letter - Dayton Industrial Drum ("DID")

Hello Tom.

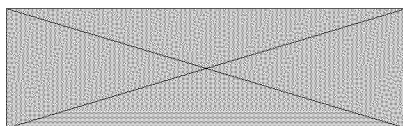
The last time we talked about this site and Dayton Industrial Drum was in 2012 (see the email string below). It's too bad that USEPA is not subject to "Rule 11" like obligations/sanctions when it accuses a party of being a PRP. I still await a response to my request to you from September 17, 2012 to provide specific evidentiary support that DID disposed of or arranged for the disposal of anything at the SDD let alone hazardous substances. Your reference to the deposition of Ed Grillot at that time was and is an unacceptable response. I reiterate my request and you may elevate my request to a formal FOIA request since my attempt previously to obtain that information informally was unsuccessful. Please forward this email to the appropriate party for a formal FOIA response. Please do not generally refer to a deposition transcript, please provide the specific evidence that you have.

Please also forward this email to Margaret Herring as I can represent on behalf of my client that it will object to the information request and that it has no responsive information related to any disposal of material at the SDD. USEPA has made previous requests for information of DID related to this and other sites in the Dayton area and to request the same information again is unreasonable and already available to USEPA.

In addition the USEPA letter is very confusing. It looks like a form letter for a site where no work has been undertaken and suggests the formation of a PRP Steering Committee. This site has 2 AOC's covering the work in question and I suspect the RI/FS is nearing completion. Can you explain the objective of this letter?? As you are also aware, DID has been named in a contribution action by other PRP's related to the 2nd AOC at the SDD. I am not representing DID in that matter but I understand there are discovery responses from DID that those plaintiff PRP's could make available to USEPA which would also answer many of the questions in the information request.

Needless to say with the paucity of evidence connecting DID to this site the USEPA letter was not well received.

Tim.



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From: Hoffman, Timothy
Sent: Monday, September 17, 2012 4:44 PM
To: Nash.Thomas@epamail.epa.gov
Subject: RE: South Dayton Dump "SDD"/General Notice/September 10, 2012/David Hussong

Thanks Tom . There is no reference to Dayton Industrial Drum in the notice.

I have read Ed Grillot's deposition and he was "coached up" well. He referred to the Barrel Factory in Beavercreek "from talking to a couple of the drivers" with no firsthand knowledge himself. That testimony would never be admissible as its hearsay.

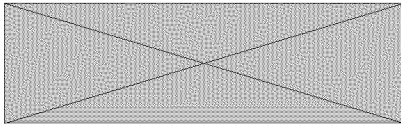
Just so you know, the Beavercreek operation he is talking about was really two operations. One was a "solvent recycling" operation operated by a separate corporation and one was a drum recycling operation operated by a separate company called Lammers Barrel. Lammers Barrel moved its operations before the "incident" he talked about to Radio Rd in Dayton and new owners changed the name to Dayton Industrial Drum. The drum recycling operation in Beavercreek and then after they moved to the Dayton location dealt with empty drums and would never have disposed of any as they were their "bread and butter" so to speak. Those drums were either recycled or sold as scrap metal. Disposing of a drum was like throwing away money and that practice continues today to either recycle or sell them as scrap metal.

If there were drums disposed of by the "Barrel Factory" factory in Beavercreek with spent solvent material in them they would not have come from the drum recycling operation. I also cannot imagine that the solvent recycling operation would have disposed of spent solvents either as that was how they made their money too. Ed Grillot's testimony is not credible. That whole litany of "testimony" in those several pages of the transcript looks rehearsed to me with company names coming from Larry Silver and not Mr. Grillot's memory.

I do not believe USEPA should be using Mr. Grillot's second hand hearsay knowledge as the basis for issuing notice letters without anything more. If you have more substantiation I'd like to see it.

Thanks.

Tim.



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Please note, my email address has changed. Be sure to update your records.

From: Nash.Thomas@epamail.epa.gov [<mailto:Nash.Thomas@epamail.epa.gov>]
Sent: Monday, September 17, 2012 4:15 PM
To: Hoffman, Timothy
Subject: Re: South Dayton Dump "SDD"/General Notice/September 10, 2012/David Hussong

Tim

David Husong was sent a general notice for Dayton Industrial Drum. We did not intend to name him personally as a PRP, we thought of him as a contact point for DID. The nexus can be found in the deposition of Ed Grillot.

Thanks, Tom

(c) Thomas C. Nash
Associate Regional Counsel
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email: nash.thomas@epa.gov

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▼ "Hoffman, Timothy" ---09/17/2012 01:03:59 PM---Hello Tom. I am in receipt of USEPA's correspondence mentioned above. In addition to representing K

From: "Hoffman, Timothy" <tim.hoffman@dinsmore.com>
 To: Thomas Nash/R5/USEPA/US@EPA,
 Date: 09/17/2012 01:03 PM
 Subject: South Dayton Dump "SDD"/General Notice/September 10, 2012/David Hussong

Hello Tom. I am in receipt of USEPA's correspondence mentioned above. In addition to representing Kathryn Boesch and Margaret Grillot our firm also represents a number of other parties in other matters unrelated to the SDD that received this General Notice of Liability. I expect we will be asked to represent some of them in this matter.

I have already been contacted by David M. Hussong and I would like for you to send me the specific information you have as to why he was named personally. If you have it in an electronic version that would be appreciated. There may be others but for now my inquiry is limited to Mr. Hussong.

I will not be able to attend the September 19th meeting. I am curious why the gas sampling work is not being addressed in the scope of the current RI/FS process. I am also curious how the exceedences of ODH Sub Slab Screening Levels rise to the level of enforceable "action levels"? Likewise how those exceedences justify a time sensitive removal action without more? Any information you can provide in this regard is appreciated.

Thank you.

Tim.

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This was done to limit the distribution of computer viruses introduced
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If the message sender is known and the attachment was legitimate, you
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extension and resend the Email with the renamed attachment. After
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For further information, please contact the EPA Call Center at
(866) 411-4EPA (4372). The TDD number is (866) 489-4900.

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